



General Motors East Africa Limited & 2 others v Mwuna (Legal Representative to the Estate of Fred Muna Mwanja) (Civil Appeal E442 of 2021) [2025] KEHC 6802 (KLR) (27 May 2025) (Judgment)

Neutral citation: [2025] KEHC 6802 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL APPEAL E442 OF 2021**

TW OUYA, J

MAY 27, 2025

BETWEEN

GENERAL MOTORS EAST AFRICA LIMITED 1ST APPELLANT

JIMNA KAOKI MUTHUSI 2ND APPELLANT

PETER MUTISO KILSILU 3RD APPELLANT

AND

AGNES SYOMBUA MUNA RESPONDENT

LEGAL REPRESENTATIVE TO THE ESTATE OF FRED MUNA MWANIA

(Being a consolidated appeal from the Judgment of the Honourable court delivered on the 9th of July 2021 and from the Ruling of the Honorable Court delivered on the 2nd of February, 2022 at the Chief Magistrate's court at Nairobi by L.L Gicheha (Mrs) Chief Magistrate and Hon. M. Nyaga, Chief Magistrate respectively)

JUDGMENT

Background

1. This appeal emanates from the Judgment delivered on the 9th of July 2021 and Ruling delivered on the 2nd of February 2022 at the Chief Magistrate's court at Nairobi by L.L Gicheha (Chief Magistrate) and Hon. M. Nyaga, (Chief Magistrate) respectively.
2. The suit was initiated by the Plaintiff (Respondent herein) arising from a road traffic accident along Matuu Mwingi Road involving motor vehicle registration number KAK 001E driven by the Plaintiff (Respondent herein) and KCJ 23Q driven by the 3rd Defendant (3RD Respondent herein) causing injuries to the said Plaintiff (Respondent) and extensive damage to motor vehicle KCJ 23Q. The matter



proceeded to full trial and the trial court found in favor of the Appellant thereby awarding damages totaling kshs. 650,000.

3. The appellants being dissatisfied with the outcome filed the instant appeal vide memorandum of appeal dated 22nd July 2021 raising the following grounds:
 - a. That the learned magistrate erred in fact and in law in awarding general damages that are too high in the circumstances.
 - b. That the Learned Magistrate erred in fact in finding that the Respondents were entitled to general damages of Kshs 350,000 which are too high in the circumstances.
 - c. That the Learned Magistrate erred in fact in failing to take into account the totality of evidence tendered before her.
4. The appellant prays for orders that:
 - a. Appeal be allowed with costs
 - b. Judgement delivered on 9th July by Hon. L. Gicheha Chief Magistrate be set aside
 - c. The honorable court be pleased to substitute the award under general damages with an appropriate amount
 - d. That cost of this appeal be borne by the Respondents
5. In response to the Defendant(Appellant) appeal, the plaintiff(Respondent) filed a memorandum of Cross Appeal dated 4th March 2022 seeking for orders that:
 - a. This Cross Appeal be allowed with costs.
 - b. The judgment delivered on the 9th July 2021 by Hon. Gicheha (Mrs) Chief Magistrate be set aside.
 - c. This Honorable court be pleased to substitute the award under:
 - i. Pain and suffering of Kshs 150,000 with an appropriate amount as the court deems just and fair.
 - ii. Future medical expense of Kshs 240 with the appropriate amount as the court deems just and fair.
 - iii. Drivers Costs of Kshs 60,000 with the appropriate amount as had been claimed and future expense/salaries.
 - d. This Honorable court be pleased to give award for:
 - i. Loss of amenities
 - ii. Future earnings capacity to earn and economic loss/retention.
 - iii. Loss of capacity to earn and economic loss.
 - iv. Special damages pleaded by the Appellant and based on evidence tendered before Trial Court but not take into consideration in its judgment.
 - v. Any other prayer left out or any other further orders as this Honorable Court shall deem fit to grant.



6. It is worthwhile to note that that this appeal is a consolidation of civil appeal no. E098 of 2022 and civil appeal no. E125 of 2022 after court gave orders that civil Appeal no E442 of 2021 be the lead file in both appeals.
7. It is also worthwhile to note that at the time of determination of this appeal, that the Plaintiff (Respondent) had passed on and substituted by Agnes Syombua Muna as legal representative vide court order dated 22nd July 2024.
8. The matter was canvassed by way of written submissions by counsel for the respondent. Counsel for the Appellant failed to file any submissions even after court gave directions to that effect.
9. Counsel for respondent in his submissions focused on two issues: whether the Respondent met the threshold for award of special damages in the amended plaint dated 22nd October 2019 and whether the general damages awarded by the trial court were appropriate and constituted a fair assessment for purposes of compensation. Counsel argues that the trial court erred by failing to give full consideration of the respondent's pleadings on special damages thereby denying the plaintiff/ Respondent justice. He points out that the respondent specifically pleaded and proved amounts for special damages by adducing evidence including police abstract, medical receipts, medical reports and other relevant documentation which was adopted as a bundle by the trial court comprising of:
 - a. Police Abstract.....Kshs 200
 - b. Medical reportKshs 3,000
 - c. Medical expenses.....Kshs 652,353
 - d. Motor vehicle search.....Kshs 500
 - e. Medical Report expenses.....Kshs 55,000
 - f. Amounts paid to driver so far upto July 2019 and still continuing.....Kshs 590,000

Total.....Kshs.1,301,053
10. Further to the above, counsel points out that the trial court made a clerical error in the figure representing medical expenses by mentioning in the judgement kshs.617,000 instead of the actual pleaded amount of kshs. 652,353. Counsel urges the court to correct the trial court error by awarding the actual amount pleaded since the same was specifically pleaded and proved.
11. It is the Respondent's position that the Appellant failed to adduce evidence or submissions before the trial court and that this meant that the respondent's claim for special damages was uncontroverted and that despite of the trial court finding the appellant 100% liable it chose not to consider all of the evidence tendered in respect of the liquidated damages. In this regard, counsel submits that the respondent sufficiently met the threshold for an award of special damages as pleaded and prays that the order in the cross-Appeal be allowed.
12. Counsel argues that the general damages award was inordinately low and not commensurate with the injuries sustained by the Respondent. Counsel also points out that the trial magistrate in making the impugned determination erroneously considered an alleged pre-existing shoulder disease while the respondent's medical reports by two surgeons Drs. Wokabi and Andari dated 21st July 2017, 31st October 2017 and 21st February 2019 do not state that the shoulder was injury was old or unrelated to the accident.



13. Lastly, counsel avers that the comparative authorities referred to by the trial court in its judgement involve comparatively minor injuries affecting only the fingers of the aggrieved party while in the respondent's case the injuries rendered him disabled, completely incapacitating his right arm and limiting his neck movement.
14. Reference was made to the cases of: Njuguna Consolidated Co Ltd & Another v Lineth Chemutai Moritim(2019)eklr., Jimna Muthusi Kaloki v. Rebeka Wanzila Musyoka(2020)eklr and Siphanus Kumbe Murando v Lamech Mbaka Motegi & Another(2013)

Analysis

15. Having carefully considered the entire record, grounds of appeal and the parties rival written submissions together with all the authorities cited, I find that the issues arising for my determination revolve around liability the amounts awarded to the respondent in quantum of damages.
16. The Court of Appeal stated in Abok James Odera t/a A. J. Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates [2013] eKLR that:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

17. This court notes that the trial court in its judgement was explicit on the issue of liability by stating:

“It is not in dispute that an accident did occur on 31/1/2027 involving plaintiff's Motor Vehicle KAK 001 E and defendants motor vehicle KCJ 223 Q.

According to the plaintiff the defendant was to blame for the accident as he moved to the plaintiff that is an attempt to overtake a bus that was ahead of him.

The PW1 he visited the scene. The defendant negligent and was charged with causing death by dangerous driving and fined Kshs 10,000/=.

The evidence was not rebutted as the defendant did not any witness. He was liable by overtaking when it was not safe to do so. The defendant was negligent. That he bears 100% liability.”

18. The Court of Appeal for East Africa set out the duty of the first appellate Court in *Selle –Vs- Associated Motor Boat Co.* [1968] EA 123. Further, it is trite that an appellate Court will not ordinarily interfere with a finding of fact made by a trial Court unless such finding was based on no evidence, or it is demonstrated that the Court below acted on wrong principles in arriving at the finding it did. See *Ephantus Mwangi & Another vs Duncan Mwangi Wambugu* [1982 – 1988] 1 KAR 278.
19. Based on the above, this court finds no basis to tamper with the trial court finding on liability. I shall therefore embark on evaluating the evidence leading to the two heads of damages awarded to the respondent. It is trite that special damages must not only be pleaded but must also be strictly proved. From the record, the special damages claim by the respondent was pleaded in the amended plaint dated 22nd October 2019 as:
 - a. Police Abstract.....Kshs 200
 - b. Medical reportKshs 3,000



- c. Medical expenses.....Kshs 652,353
- d. Motor vehicle search.....Kshs 500
- e. Medical Report expenses.....Kshs 55,000
- f. Amounts paid to driver so far upto July 2019
and still continuing.....Kshs 590,000
- Total.....Kshs.1,301,053

20. From the record, the court adopted the respondent’s list of documents dated 24th May 2018 and 6th March 2019. The trial court acknowledged in its judgment that the respondent had incurred 617,000 in medical bills. However, this court notes that the trial court appeared to have relied on the first bill totaling kshs. 617,000 from Karen Hospital. However, there are additional receipts confirming payments to the same hospital on diverse dates in the months February and March 2017 and another Protection house surgical clinic dated 19th February 2019. Noting that some of the receipts are faded and illegible, this court finds that those that are legible amount to kshs. 20,500 and should be added to the amount that was awarded by the trial court bringing the total to kshs. 637,500.

21. It is also noted that the respondent made a claim of kshs. 590,000 being the amount paid to a hired driver on a monthly basis. This is supported by copies of petty cash vouchers, his statement and testimony that he could not drive for a while following the accident. The trial court awarded kshs. 60,000 on this claim. The trial court held that:

“However the pain he may have suffered due to soft tissue injuries immediately after the accident he may have required a driver I refund three months’ salary and the dates which come to kshs. 60,000.”

22. On the other hand, this court takes note that the medical reports available on the record are consistent regarding the respondent’s injuries. For instance , the medical report by Dr. Adari of Karen hospital dated 31st October 2017 reads in part:

“While the hand injury has healed well, Mr . Muna is unable to abduct his right hand which means that he cannot lift his right arm above his shoulder level.
Clinically there is a sign of infringement syndrome of the shoulder joint disease atrophy has invariably set up further complicating the limb function.”

23. The medical report by Dr. Wokabi dated December 2017 reads in part:

“PRESENT CONDITION

Today he had complaints that :

- i. He feels discomfort on the right side of the head
- ii. He experiences pain on the right shoulder
- iii. He cannot raise the right arm at the shoulder. He is not able to cut , dig or thrust with the right upper limb.....

Opinion



.....He has developed pain and stiffness on the right shoulder. This is known as peri arthritis. It is a painful condition which is also associated with restriction of the movement of the joint. It will cause permanent pain and disability in which case I asses disability at 12%.....”

24. Upon further review by DR. Wokabi vide report dated 21st February 2019 his opinion was that:

“ After 1 year since I examined him , his condition has remained more the same. The prognosis I gave has remained the same.....”

25. From the above, it is my observation that the injuries sustained by the respondent to his right arm and shoulder were not only serious but they also affected his use of the said arm to the extent that he required the services of a driver even up to February 2019 when he was last examined as per the record. In this regard I will tamper with the Trial court award of three months’ salary for the driver and award him for the entire period that he accounted. The effect of the above is that the special damages award of kshs. 60,000 by the trial court for driver’s salary is hereby set aside and substituted with an award of kshs.520,000 as per the attached petty cash vouchers.

26. Concerning general damages, this court notes that the Respondent sustained deep cut to the head and face, fracture of the metacarpal bone, pain and stiffness to the right shoulder and; pain and suffering. The trial court awarded kshs. 350,000 for pain and suffering and kshs. 240,000 for future medical expenses.

27. It is my observation that the authorities cited by the respondent relate to more serious injuries and awards as compared to the injuries sustained by the respondent in the instant appeal. I have therefore considered the following authorities: In *Otieno v Otieno* (Civil Appeal E124 of 2024) [2024] KEHC 16565 (KLR) , the court stated:

“General damages are damages at large whose purpose is to compensate the injured to the extent that such injury can be assuaged by a money award. It has been stated that money cannot renew a physical frame that has been injured and crushed hence the courts can only award sums which must be viewed as giving reasonable compensation. Awards ought to be reasonable and must be assessed with moderation bearing in mind that the large and inordinate awards may injure the body politic. Furthermore, it is desirable that so far as possible comparable injuries should be compensated by comparable awards putting into consideration the current prevailing economic circumstances including inflation (see *Tayab v Kinanu* [1983] KLR 114 and *West (H) & Son Ltd v Shephard* [1964] AC 326, 345).

28. The respondent in the above case sustained the following injuries:Head injury with and cut woundsInjury to the chestInjury to the backInjury to the right shoulder with bruisesInjury to the elbow with fractureInjury to the right hand with cut woundsInjury to the right wrist jointInjury to the right leg knee with swelling

The court upheld the trial court award of kshs. 500,000.

29. In *Richard & Another v Ngomo (Civil Appeal 35 of 2020)* [2023] KEHC 17349 (KLR), the court stated

The Respondent is said to have sustained the following injuries:-

- a. Distal fracture of the fifth metacarpal bone
- b. Blunt injury on the head



- c. Blunt injury right elbow
 - d. Blunt injury on the right hand with fracture on 5th metacarpal
 - e. Cut wound on the left leg
30. The court found that Kshs. 400,000 would be adequate compensation for pain and suffering and awarded accordingly.
31. This court notes that inordinately high awards will have a negative effect on the economy itself. As much as a claimant may feel that he/she is entitled to the highest possible award, the court has to strike a balance between the need to compensate the claimant and the general state of the economy. The fragile economy may not be able to sustain monstrous awards and this will affect the cost of living. Having looked at the decided cases. The nature of injuries sustained by the respondent and taking into consideration the effluxion of time, I have come to the irresistible conclusion that the award made by the trial court was reasonable and warrants no interference of this court.
32. The award for future medical expenses is maintained at kshs. 240,000 as awarded by the trial court.
33. In effect, this appeal succeeds partially and the final award will read thus:
- i. General damages for pain and sufferingKshs.350,000
 - ii. Future medical expenses.....kshs. 240,000
 - iii. Special Damages (Hire of Driver).....kshs.520,000
 - Total.....kshs. 1,110,000
 - iv. Each party to bare their costs.
 - v. Stay of execution for 30 days granted.

DATED, SIGNED AND DELIVERED ELECTRONICALLY ON 27TH MAY, 2025.

HON. T. W. OUYA

JUDGE

